

1 MORGAN, LEWIS & BOCKIUS LLP
Daryl S. Landy, Bar No. 136288
2 daryl.landy@morganlewis.com
600 Anton Boulevard, Suite 1800
3 Costa Mesa, CA 92626
Tel: +1.949.399.7000
4 Fax: +1.949.399.7001

5 MORGAN, LEWIS & BOCKIUS LLP
Jennifer Svanfeldt, Bar No. 233248
6 jennifer.svanfeldt@morganlewis.com
One Market, Spear Street Tower
7 San Francisco, CA 94105-1596
Tel: +1.415.442.1000
8 Fax: +1.415.442.1001

9 Attorneys for Defendant
COMCAST CABLE COMMUNICATIONS
10 MANAGEMENT, LLC

11 SETAREH LAW GROUP
Shaun Setareh, Bar No. 204514
12 shaun@setarehlaw.com
Thomas Segal, Bar No. 222791
13 thomas@setarehlaw.com
9454 Wilshire Boulevard, Suite 907
14 Beverly Hills, CA 90212
Tel: 310.888.7771
15 Fax: 310.888.0109

16 Attorneys for Plaintiffs
ANDRÉ SCOTT, KEN FASSLER and
17 ELIJAH MAXWELL-WILSON

18 UNITED STATES DISTRICT COURT
19 NORTHERN DISTRICT OF CALIFORNIA
20

21 ANDRE SCOTT, an individual; KEN
FASSLER, an individual; ELIJAH MAXWELL-
22 WILSON, an individual, and on behalf of
themselves, all other similarly situated,
23 Plaintiffs,

24 v.

25 COMCAST CABLE COMMUNICATIONS
MANAGEMENT, LLC, a Delaware
26 Corporation; and DOES 1-50, Inclusive,
27 Defendants.

Case No. 3:16-cv-06869-EMC

**STIPULATION TO APPROVE FLSA
SETTLEMENT AND DISMISS
PLAINTIFF KEN FASSLER'S FLSA
CLAIM WITH PREJUDICE;
[PROPOSED] ORDER**

1 Pursuant to Federal Rule of Civil Procedure 41 and 29 U.S.C. Section 216, Plaintiffs
2 KEN FASSLER (“Plaintiff”) and Defendant COMCAST CABLE COMMUNICATIONS
3 MANAGEMENT, LLC (“Comcast”) (collectively the “Parties”), by and through their counsel of
4 record (collectively referred to as the “Parties”), hereby stipulate as follows:

5 WHEREAS, Comcast employed Plaintiff as a Direct Sales Representative from May 14,
6 2012 to July 8, 2014, with Plaintiff’s last day worked at Comcast occurring on April 17, 2014;

7 WHEREAS, Plaintiff filed his Complaint in this Court on November 30, 2016 (“Action”)
8 which alleges the following six claims for relief under California and Federal law: (1) failure to
9 provide meal periods under California law; (2) failure to provide rest breaks under California
10 law; (3) failure to pay hourly and overtime compensation under California law; (4) waiting time
11 penalties for late final pay under California law; (5) unfair competition pursuant to California
12 Business and Professions Code §§ 17200 *et seq.*; and (6) overtime under the Fair Labor
13 Standards Act (“FLSA”), 29 U.S.C. §§ 201 *et seq.*;

14 WHEREAS, Plaintiff sought to proceed as a class action under Federal Rule of Civil
15 Procedure 23 and a collective action under action under 29 U.S.C. Section 216;

16 WHEREAS, this Action was not conditionally certified or certified as a collective action;

17 WHEREAS, this Action was not certified as a class action;

18 WHEREAS, Plaintiff filed the operative First Amended Complaint (“FAC”) on January
19 31, 2017 (Dkt. No. 17);

20 WHEREAS, Plaintiff alleged in the FAC that he was incorrectly classified as an exempt
21 outside salesperson because he spent more than half of his time completing tasks other than sales
22 such as installing equipment, picking up and dropping off equipment, carrying various equipment
23 and tools in their trucks, traveling to and from installation, checking on the status of orders and
24 doing data entry. (Dkt. No. 17 at ¶ 11);

25 WHEREAS, Plaintiff alleged in the FAC that he typically worked approximately 55 hours
26 per week (Dkt. No. 17 at ¶ 5);

1 WHEREAS, Comcast vigorously denied that Plaintiff was incorrectly classified as an
2 exempt outside salesperson, and produced several documents in discovery showing that
3 Plaintiff's primary duty was door-to-door sales of Comcast's residential customer services and
4 that Comcast realistically expected him to spend more than half his time making sales away from
5 Comcast's offices;

6 WHEREAS, Comcast also contends that Plaintiff's FLSA claim is barred by the two-year
7 statute of limitations in the FLSA (*see* 29 U.S.C. § 255);

8 WHEREAS, Comcast took Plaintiff's deposition on August 9, 2017;

9 WHEREAS, Plaintiff admitted at deposition that Comcast expected him primarily to
10 spend his time making sales door-to-door and away from Comcast's offices;

11 WHEREAS, following Plaintiff's deposition, the Parties agreed to resolve Plaintiff's
12 claims in this Action;

13 WHEREAS, the Parties have engaged in good faith, arms-length settlement discussions,
14 where both Parties were represented by counsel, and reached an agreement to settle Plaintiff's
15 claims against Comcast;

16 WHEREAS, as part of the Parties' confidential settlement of all of Plaintiff's claims in
17 this Action, Comcast has agreed to pay Plaintiff One Thousand Five Hundred Seventy-Eight
18 Dollars and Forty-Five Cents (\$1,578.45) for the dismissal with prejudice and release of his
19 Sixth Claim for Relief, which alleges that Comcast violated the FLSA;

20 WHEREAS, the payment above is based on (1) Plaintiff's 18.57 weeks worked during
21 the claimed three-year statute of limitations period from the date Plaintiff filed the Action, and
22 (2) five hours of weekly overtime over that time period;

23 WHEREAS, the Parties have resolved Plaintiff's Sixth Claim for Relief to avoid the cost
24 and uncertainty of litigation; and

25 WHEREAS, in consideration for the settlement amount, Plaintiff signed a release of his
26 Sixth Claim for Relief for violation of the FLSA;

27 THEREFORE, the Parties hereby stipulate that the settlement amount above represents a
28 fair and reasonable resolution of a bona fide dispute and that Plaintiff's Sixth Claim for Relief

1 under the FLSA be dismissed with prejudice with each party bearing its own costs and attorneys'
2 fees.

3 Dated: January 12, 2018

SETAREH LAW GROUP

5 By /s/ Thomas Segal

6 Shaun Setareh

7 Thomas Segal

8 Attorneys for Plaintiffs

ANDRE SCOTT, KEN FASSLER and ELIJAH

MAXWELL-WILSON

9 Dated: January 12, 2018

MORGAN, LEWIS & BOCKIUS LLP

11 By /s/ Daryl S. Landy

12 Daryl S. Landy

13 Attorneys for Defendant

COMCAST CABLE COMMUNICATIONS

MANAGEMENT, LLC

14
15 **ATTESTATION RE ELECTRONIC SIGNATURES**

16 I, DARYL S. LANDY, attest pursuant to Northern District Local Rule 5-1(i)(3) that all
17 other signatories to this document, on whose behalf this filing is submitted, concur in the filing's
18 content and have authorized this filing. I declare under penalty of perjury under the laws of the
19 United States of America that the foregoing is true and correct.

20 Dated: January 12, 2018

/s/ Daryl S. Landy

21 Daryl S. Landy

1 **~~[PROPOSED]~~ ORDER**

2 Good cause appearing based upon the Recitals in the Parties' Stipulation to Approve
3 FLSA Settlement and Dismiss Plaintiff Ken Fassler's FLSA Claim with Prejudice, the Court
4 hereby approves the release of Plaintiff Ken Fassler's Sixth Claim for Relief in the First
5 Amended Complaint, and the Sixth Claim for Relief is DISMISSED WITH PREJUDICE.

6
7 Dated: 2/9/2018

